Supreme Court, U.S.
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No. 99-296

In The

Supreme Court of the United States

DEBRA WALKER, ET AL.,

Petitioners,

v.

CITY OF MESQUITE, TEXAS, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

MEMORANDUM OF RESPONDENT HOUSING AUTHORITY OF THE CITY OF DALLAS

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QUESTION PRESENTED

Whether an equal protection claim was stated in the absence of pleading or proof that any individual was subjected to special burdens or denied special benefits on account of his or her race?

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OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1-35, is reported at 169 F.3d 973. The opinions of the district court, Pet. App. 36-65, 66-206, are unreported.

JURISDICTION

The court of appeals entered its judgment on March 16, 1999. Pet. App. 2. Petitions for rehearing were denied on May 19, 1999. Pet. App. 211. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Until this suit was filed, public housing in Dallas was *de jure* segregated by race. Pet. App. 40,[1] 41,[2] 73-81.[3] That segregation resulted in the exclusion of public housing from white neighborhoods. Pet. App. 69.[4] As a remedy for the systematic exclusion of public housing from white

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[1] Neighborhood groups (in 1950) opposed the construction of public housing because it contravened the "agreed line of demarcation between colored residents and white residents in the City of Dallas." Pet. App. 40.

[2] "DHA and the City felt an equally important need to keep blacks from moving into white areas [in 1950]." Pet. App. 41.

[3] "The director of DHA . . . specifically stated that the only place he would even consider putting the projects was 'in niggertown.' " Pet. App. 78-79.

[4] "The tragic racial discrimination of the past effectively built a fence behind which all public housing had to remain in minority neighborhoods." Pet. App. 69, n. 5.

neighborhoods, the district court ordered the construction of public housing projects in "predominantly white areas."[5] Pet. App. 214.

Attempting to comply with the district court's remedial order, the Housing Authority of the City of Dallas ("DHA") bought two tracts of unimproved land in a "predominantly white area" on which to build two small-scale housing developments. Pet. App. 67. When nearby homeowners learned that their new neighbors were to be public housing residents, they mobilized their neighborhood associations, the Highlands of McKamy IV and V Community Improvement Association and the Preston Highlands Homeowners' Association, Inc. The associations and two individuals (collectively, the "Homeowners") sued DHA to prevent the construction of public housing in their neighborhood. Pet. App. 67. The Homeowners alleged that they were being denied equal protection because the race of the majority of the residents of the area was one criterion for selecting the sites. Pet. App. 69.

The district court denied relief, Pet. App. 207-209, and the Homeowners appealed.

The court of appeals reversed, finding that the district court's remedial order was not narrowly tailored and therefore denied the Homeowners equal protection. Pet. App. 34.

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[5] A "predominantly white area" is defined as "less than 37% total non-Hispanic African-American, Hispanic, or other minority persons." Pet. App. 8.

ARGUMENT

The district court required DHA to build public housing in "predominantly white areas." Pet. App. 214. The Homeowners, who lived in "predominantly white" neighborhoods, contended that they were denied equal protection by the court's requirement to build public housing only in white areas, coupled with DHA's proposed construction of two 40-unit apartment complexes in their "predominantly white" neighborhood. Pet. App. 9, 69.

Although the Homeowners live in a "predominantly white area," Pet. App. 13, 69, no individual complained that he or she was denied equal protection because of his or her race. DHA App. 2, 3-7, 12-16. The Homeowners instead claimed that they were denied equal protection because almost all of the current residents of their neighborhoods were white. Pet. App. 69; DHA App. 31. No individual claimed that he or she personally was subjected to any burden or denied any benefit on account of his or her race, and none claimed to have been stereotyped or stigmatized because of his or her race – if the Homeowners were stigmatized, it was because their neighborhood was labeled "predominantly white."

The court of appeals concluded that the Homeowners were denied equal protection because the district court's remedy was not narrowly tailored. Pet. App. 34. The court of appeals reached that conclusion despite the absence of pleading or proof that any individual was discriminated against because of his or her race or because of his or her membership in an identifiable racial class. The decision of the court of appeals is contrary to

the traditional understanding of equal protection as a guarantee against the imposition of special burdens on account of the race *of the person burdened* and therefore conflicts with relevant decisions of this Court.

Racial classifications have been subjected to strict scrutiny and held unconstitutional because they treat people differently on account of their race, *Bush v. Vera*, 517 U.S. 952, 1008[6] (1996) (Stevens, J., dissenting); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227[7] (1995); *Fullilove v. Klutznick*, 448 U.S. 448, 523,[8] 525[9] (1980) (Stewart, J., dissenting), and because *de jure* segregation "emphatically implies the inferiority of one race." *Bush*, 517 U.S. at 1055 (Souter, J., dissenting); *see also Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954).[10] Except perhaps

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[6] "Prior to Shaw I . . . we [applied strict scrutiny analysis] only in cases in which . . . discrimination harmed an individual or group of individuals because of *their* race." *Bush*, 517 U.S. at 1008 (Stevens, J., dissenting) (emphasis added).

[7] "[T]he Fifth and Fourteenth Amendments to the Constitution protect *persons*, not *groups*." *Adarand*, 515 U.S. at 227 (emphasis added).

[8] "Under our Constitution, any official action that treats a person differently on account of *his* race or ethnic origin is inherently suspect and presumptively invalid." *Fullilove*, 448 U.S. at 523 (emphasis added).

[9] "Under our Constitution, the government may never act to the detriment of a person solely because of *that person's* race." *Fullilove*, 448 U.S. at 525 (Stewart, J., dissenting) (emphasis added).

[10] "To separate [minority children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community." *Brown*, 347 U.S. at 494.

in the racial gerrymander cases,[11] the Court has never extended the guarantees of the equal protection clause to individuals who claim to be injured on account of someone else's race and, accordingly, has rejected equal protection challenges brought by individuals who were not injured because of their own race or color. *United States v. Hays*, 515 U.S. 737, 744-745 (1995); *Bush*, 517 U.S. at 957. The decision of the court of appeals nevertheless purports to require strict scrutiny of a desegregation order that may affect geographical areas populated "predominantly," but not exclusively, by non-Hispanic whites without a showing that any individual was adversely affected on account of *his or her* race. The court of appeals, at the same time, purported to extend equal protection standing to individuals who did not allege that they personally were subjected to burdens or denied benefits on account of *their own* race, contrary to this Court's decisions in *Hays*, 515 U.S. at 744-745 and *Bush*, 517 U.S. at 957.

Until *Shaw v. Reno*, 509 U.S. 639 (1993), the Court apparently applied strict scrutiny analysis to racial classifications only when they "harmed an individual or set of individuals because of their race," *Bush*, 517 U.S. at 1008 (Stevens, J., dissenting), and required evidence of substantial harm to an "identifiable group." *Bush*, 517 U.S. at 1050, 1053-1054 (Souter, J., dissenting); *Shaw v. Hunt*, 517

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[11] *Lawyer v. Justice*, 521 U.S. 567 (1997); *Abrams v. Johnson*, 521 U.S. 74 (1997); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Miller v. Johnson*, 515 U.S. 900 (1995); *United States v. Hays*, 515 U.S. 737 (1995); *Shaw v. Reno*, 509 U.S. 639 (1993).

U.S. 899, 923-925, 928 (1996) (Stevens, J., dissenting). The Court's pre-Shaw decisions were based on the "very understanding of equal protection as a practical guarantee against harm to some class singled out for disparate treatment." *Bush*, 517 U.S. at 1053 (Souter, J., dissenting); *see also* Saunders, *Equal Protection, Class Legislation, and Colorblindness*, 98 Mich. L. Rev. 245 (Nov. 1997).[12]

The requirement to build public housing in "predominantly white areas" manifestly does not classify any individual on account of his or her skin color, does not treat any individual differently on account of his or her race,[13] does not perpetuate archaic and stereotypic notions or stigmatize any individual as innately inferior, and does not deny any individual equal treatment solely because of his or her membership in an identifiable racial group, unless it can be said that the residents of "predominantly white areas," regardless of the race of any individual, are a racially identifiable group. The requirement to build public housing only in "predominantly white areas" plainly does not stigmatize the Homeowners

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[12] "In the racial gerrymandering cases, the Court has confronted state action that, though undeniably race-conscious, does not appear to single out any identifiable group of persons for special disadvantage *because of their race*." Saunders, *supra*, 98 Mich. L. Rev. at 245 (emphasis added).

[13] "Predominantly white area" is defined as an area in which the population is "less than 37% total non-Hispanic African-American, Hispanic, or other minority persons." Pet. App. 8. Areas with a 36% minority population therefore could qualify as "predominantly white", and residents of all races, white or minority, would be affected equally by the construction of public housing.

by implying that they are racially inferior. The requirement to build new public housing only in "predominantly white areas," if racially discriminatory at all, is " 'discrimination' only in the sense that the lines [of those areas] are drawn based on race, not in the sense that harm is imposed on specific persons on account of their race." *Bush*, 517 U.S. at 1008 (Stevens, J., dissenting).

The court of appeals purported to require strict scrutiny of a desegregation remedy that the court views as discriminatory because, citing *Shaw v. Reno*, "[l]aws that explicitly distinguish between individuals on racial grounds fall within the core of the Equal Protection Clause's prohibition." Pet. App. 16-17. The court of appeals concluded that the district court's remedial order "distinguishes between individuals" and therefore is subject to strict scrutiny without requiring a showing that any individual was subjected to special burdens or was stigmatized on account of his or her race. That decision of the court of appeals conflicts with decisions of this Court that limit strict scrutiny analysis to the unequal treatment of individuals who, because of *their* race, are subjected to special burdens, denied special benefits, or stigmatized, and is contrary to the "very understanding of equal protection" because the remedial order, "though undeniably race-conscious, does not appear to single out any identifiable group of persons for special disadvantage *because of their race*." Saunders, *supra*, 98 Mich. L. Rev. at 245 (emphasis added).

CONCLUSION AND PRAYER

The court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court, and the petition for certiorari should be granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLANDS OF McKAMY IV AND V COMMUNITY IMPROVEMENT ASSOC., GINGER LEE, PRESTON HIGHLANDS HOMEOWNERS' ASSOC., INC. AND DAVID BEER	§	
Plaintiffs,	§	Civil Action No. 3-96-CV-1866-R
vs.	§	
HOUSING AUTHORITY FOR THE CITY OF DALLAS,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT
AND REQUEST FOR INJUNCTIVE RELIEF

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiffs Highlands of McKamy IV and V Community Improvement Assoc., Ginger Lee, Preston Highlands Homeowners' Assoc., Inc., and David Beer file this their Original Complaint and Request for Injunctive Relief[1] and would respectfully show the Court as follows:

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[1] Because this lawsuit is related to remedial orders entered in *Walker v. United States Dept. of Housing Urban Development*, Cause No. 3-85-1210-R, pending in the Northern District of Texas. Plaintiffs' request that this court consolidate this lawsuit with the *Walker* case.

I.

Parties

1. Plaintiff Highlands of McKamy IV and V Community Improvement Association ("Highlands of McKamy") is a non-profit corporation organized under the laws of the state of Texas. Highlands of McKamy is a homeowners' association that represents approximately 247 households in Dallas, Texas.

2. Plaintiff Ginger Lee is an individual who resides in Dallas, Texas.

3. Plaintiff Preston Highlands Homeowners' Association, Inc. ("Preston Highlands") is a non-profit corporation organized under the laws of the state of Texas. Preston Highlands is a homeowners' association that represents approximately 673 households in Dallas, Texas.

4. Plaintiff David Beer is an individual who resides in Dallas, Texas.

5. Defendant Housing Authority for the City of Dallas ("DHA") is a governmental body established on or about March 11, 1939, by resolution of the Dallas City Council. DHA may be served with process by and through its president. Alphonso Jackson, as its principal place of business at 3939 North Hampton Road, Dallas, Texas 75212.

II.

Jurisdiction and Venue

6. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 in that Plaintiffs' claims arise under the Constitution, laws, or treaties of the United States. Specifically, Plaintiffs' claims against Defendant relate to the violation of Plaintiffs' rights under the 14th Amendment of the United States Constitution, in violation of 42 U.S.C. § 1983.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because this action is not founded solely on diversity of citizenship, and (a) this is the judicial district in which the sole Defendant resides, and (b) a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

III.

Background Facts

A. The Walker Case.

8. In 1985, Plaintiff Debra Walker filed a lawsuit against the Housing Authority for the county of Dallas ("DHA"), Cause No. 3-85-1210-R which remains pending in the Northern District of Texas (hereinafter the "Walker Case"). In the Walker Case, Walker alleged claims on her individual behalf, as well as a class of "all black persons who are presently or who, during the pendency of this Decree, become either (a) residents of a DHA owned or managed project, or (b) participants in the DHA Section 8 Existing Housing Program." *See Walker v. United States Department of Housing and Urban Development*, 734 F. Supp.

at 1232, n. 1 (N.D. Tex. 1989) (hereinafter "Walker I"). In addition to the plaintiff class and DHA, the other parties include the United States Department of Housing & Urban Development ("HUD") and the City of Dallas.[2]

9. The plaintiff class in the Walker Case alleged that DHA and HUD maintained intra-program segregation within DHA's programs by assigning white elderly tenants to predominantly white projects and black elderly tenants to predominantly black projects. In addition, the plaintiff class alleged that the defendants engaged in racial segregation by operating DHA's programs in a manner that presents black recipients of HUD/DHA assistance only with the choice of predominantly black housing in predominantly black areas for the purpose of perpetuating racial residential segregation. *Walker v. United States Department of Housing and Urban Development*, 734 F.Supp. at 1266 (N.D. Tex. 1989) (hereinafter "Walker II"). In particular, minority families living in the housing project known colloquially as the "West Dallas Housing Project" complained that DHA, HUD, and the City of Dallas had discriminated against blacks in site selection by refusing to locate new housing projects in predominantly white areas of the City, and later by being

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[2] When the case was originally filed, the Plaintiffs also sued the cities of Plano, Richardson, Mesquite, Irving, Addison, Garland, and Farmers Branch. However, these cities were dismissed from the lawsuit when they agreed to participate in the Section 8 program. *See* Walker I, 734 F. Supp. 1233 and n. 6.

denied full participation in DHA's Section 8 Existing Housing Program.[3]

10. The parties to the Walker Case negotiated a consent decree pursuant to which the Court then entered findings of discrimination on the part of DHA and HUD (the "Consent Decree"). In this regard, most of the findings, issues, and relief ordered in the Walker Case were *not* the result of contested litigation among the parties. Indeed, this characteristic of the Walker Case was recently recognized by one of the parties to the Walker Case:

> The remedial obligations contained in the Order, other than those which were also contained in the Cisneros Plan, were first presented to HUD as part of a settlement proposal on October 24, 1995. Ex. 1. They were not the subject of the September 1994 hearing, where Plaintiff offered only documentary (or "predicate") evidence on the continued existence of vestiges of *de jure* segregation. As a consequence, HUD has not been afforded an opportunity to contest these provisions in an adversarial proceeding.

HUD's Motion to Modify Remedial Order Affecting HUD, p. 17 (May 24, 1996).

11. In approving the Consent Decree, the Court found a long history of discrimination by the DHA against blacks in locating public housing in minority areas. Specifically, the Court found discrimination against

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[3] The Section 8 program was designed to desegregate the racially identifiable Dallas projects through the use of certificates and vouchers. *See* 42 USC § 1437f (b and o).

blacks in the selection of sites for public housing. *See Walker v. United States Department of Housing and Urban Development*, 734 F. Supp. at 1293-1309 (N.D. Tex. 1989) (hereinafter "Walker III"). Moreover, the Court found that the City of Dallas had been a substantial cause of that discrimination. *Id.* at 1309-1312. The Court also found that the West Dallas Housing Project, which had been constructed in the 1950's, and which consisted of some 3,500 units on three separate sites, was plagued by deplorable conditions, including high crime rates: exposure to industrial uses and environmental hazards; inappropriate industrial zoning, unsatisfactory streets, curbs, draining, sidewalks, and lighting, lack of neighborhood commercial services such as grocery stores, pharmacies, and banks; lack of decent, affordable housing around the projects: high concentrations of poverty; and public schools challenged by a high percentage of students failing to pass minimum competency tests. *Id.* at 1266-1269.

12. To alleviate these conditions, including the history of past discrimination, the Consent Decree obligated DHA to develop and submit to HUD for approval a comprehensive plan for revitalizing the West Dallas Project. The plan that was developed by DHA recommended modernizing 800-900 units and demolishing the remaining 2,600 units over a period of five years. This demolition at West Dallas would be completed with the issuance of a like number of Section 8 vouchers and certificates to enable residents to relocate to predominantly white areas of Dallas.

13. The Consent Decree did not require HUD or DHA to provide the fiscal resources necessary to accomplish the demolition and replacement, and those

resources were not forthcoming during the pendency of the decree. The lack of those resources frustrated the remedial relief set forth in the Consent Decree. Accordingly, the Court vacated the Consent Decree in 1992.

14. Thereafter, the plaintiff class filed a Motion for Partial Summary Judgment against DHA and HUD seeking judgment on the issue of liability. This Motion was granted on May 27, 1994. Subsequently, the Court heard evidence concerning a renewed request for remedial relief against DHA and HUD. On February 7, 1995, the court entered its Remedial Order Affecting DHA. Thereafter, on April 16, 1996, the Court entered its Remedial Order Affecting HUD.

B. The Remedial Order Affecting DHA.

15. The Remedial Order Affecting DHA set forth findings of four distinct "vestiges" of discrimination, along with specific remedial measures to be accomplished by DHA. Specifically, the Court, *inter alia*, ordered the following remedial measures:

(1) The demolition of at least 2,630 units of public housing in the West Dallas Project;

(2) The requirement that each unit to be demolished be replaced on a one-for-one basis. Such replacement units are to consist of 100 public housing units already constructed at the Country Creek Site. 674

public housing units to be constructed,[4] and 2,033 Section 8 certificates and vouchers.

(3) The development through construction or acquisition of an additional 3,205 public housing units in predominantly white areas.

Remedial Order Affecting DHA at 1-2. In addition, the Court ordered DHA to adopt a race-conscious tenant selection program in order to maximize the opportunity to relocate blacks to predominantly white areas. *Id.* at 5.

C. DHA's Implementation

16. Pursuant to the Remedial Order, on or about April 26, 1996, DHA announced its intention to purchase two property sites for the purpose of constructing public housing. These two sites are located at (1) McCallum Boulevard and Meandering Way and (2) Highway 190 and Hillcrest Road, as evidenced by Exhibits "A" and "B", respectively (the "Sites"). These Sites lie in close proximity to Plaintiffs' homes and communities.

17. Following this announcement, DHA convened two public meetings, as required under the Texas Open

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[4] Notwithstanding this Order, DHA has repeatedly made public statements to the effect that it is required by the decree in the Walker Case to construct only 474 units of public housing in predominantly white areas of Dallas. This difference in the number of units to be constructed is not material to any claim alleged by Plaintiffs. Regardless of the precise number, DHA has announced an intention to build public housing in close proximity to Plaintiffs pursuant to the mandates of the Remedial Order Affecting DHA in the Walker Case.

Meetings Act which meetings occurred on June 19 and 20, 1996. Although a number of problems with the Sites became evidence at these open meetings, DHA remains committed to acquiring both Sites for the purpose of constructing public housing, as mandated by the Remedial Order Affecting DHA. In fact, on July 2, 1996, DHA voted in favor of acquiring the Sites for the purpose of constructing public housing on them.

18. Upon information and belief, DHA is currently scheduled to close on the acquisition of the Sites in July 1996. Once DHA closes on the property, DHA intends to begin constructing approximately 40 units of public housing on each of the Sites. Tenants for these public housing units will then be selected pursuant to a race-conscious tenant selection method.

19. DHA's implementation of the Remedial Order Affecting DHA constitutes a "race-conscious" remedy that is subject to the "strict scrutiny" test under the federal constitution. Pursuant to the Remedial Order, DHA has selected the Sites primarily, if not solely, by virtue of the fact that they are located in "predominantly white areas," which the Court defined as an area in which the population "is less the 37% total non-Hispanic. African-American Hispanic, or other minority persons." *See* Remedial Order Affecting DHA at 3 (¶ A.3). In addition, DHA will select tenants for these newly constructed units pursuant to a "race-conscious tenant section method," as mandated by the Remedial Order. *See id.* at 5 (¶ A.8). Such a race conscious tenant selection method will give preference to those applicants who locate in units where the applicants' race does not predominate.

20. In implementing the Court's race conscious Remedial Order, DHA did not attempt to offer evidence of any alternate method(s) to remedy the vestiges of discrimination. Consequently, the Court did not evaluate whether other, less intrusive means were available as an alternative to the requirement that DHA construct new public housing units.

21. Similarly, DHA has not attempted to challenge the Remedial Order on the ground that such order is not narrowly tailored, nor the least intrusive means by which to remedy the vestiges of discrimination. Instead, DHA has accepted the race conscious aspects of the Remedial Order, has not publicly evaluated whether alternatives might be preferable and more efficacious, and has proceeded to implement the Remedial Order by seeking to acquire the Sites and to thereafter construct public housing on the Sites.

22. Contrary to DHA's implementation of the Court's Order, there are alternative and less intrusive means by which to remedy the vestiges of discrimination found by the Court. Specifically, Section 8 certificates and vouchers, which are already being utilized as the principal relief in the Remedial Order, are a less intrusive means for remedying the vestiges of discrimination. In addition to being less intrusive, Section 8 certificates and vouchers represent a more effective and more flexible way in which to remedy the vestiges of discrimination. Indeed, Section 8 units provide the recipients with greater flexibility in terms of the location of and the amenities provided by the unit, and also provide greater flexibility in terms of providing recipients with the ability to move as the recipient's needs change. Similarly, Section

8 units are more effective than construction of new public housing units because they: (i) impose a less severe financial burden on the government, (ii) require less judicial supervision and administration, (iii) can be implemented more rapidly than new public housing units can be constructed, and (iv) reduce the risk of perpetuating slum conditions and attendant social problems in the new public housing units – problems that are recited in detail in the Walker Case. *See* Walker III, 734 F. Supp. at 1266-69. And, Section 8 units have a less severe impact on the rights of third parties such as Plaintiffs in that DHA's conduct in acquiring and constructing public housing on the Sites has and will permanently diminish the value of Plaintiffs' property. In addition to this decline in property value, the construction of public housing on the Sites will cause increased population density, will create or increase environmental problems, and interfere with the aesthetic values of the existing neighborhoods.

23. Another alternative and less intrusive remedy is to require DHA to utilize the section 8 program[5] in a non-race conscious manner by providing Section 8 certificates and vouchers without any limitations concerning where they can be used or the race of the persons who will be allowed to use them. There has been no showing that such a color blind use of the Section 8 remedy would not be an equally effective and less intrusive way in which to

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[5] Indeed, if Section 8 were viewed by the Court to be an imperfect remedy, the Court could fashion its own remedy to provide recipients of housing assistance with effective "vouchers" or "certificates" to find appropriate and acceptable private housing on their own.

remedy the vestiges of discrimination found by the Court.

24. Yet another alternative and less intrusive remedy is to require DHA to select and acquire sites for the construction of public housing in a non-race conscious manner, and to similarly select tenants for those units in a non-race conscious manner. There has been no showing that such a color blind use of the public housing remedy would not be an equally effective and less intrusive way in which to remedy the vestiges of discrimination found by the Court.

IV.

Summary of Claims[6]

25. In the Walker Case, the Court found that there was a history of discrimination against minorities on the part of DHA, the City of Dallas and HUD. Plaintiffs in this case do not challenge the Court's finding of past discrimination. To the contrary, the challenge that Plaintiffs present in this lawsuit accepts the Court's finding of past discrimination.

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[6] Plaintiffs have not, at this stage of the litigation, joined the United States Department of Housing and Urban Development ("HUD") as a party to this suit. However, if Plaintiffs later learn that HUD has authorized funding for the acquisition and construction of public housing on the Sites, Plaintiffs intend to join HUD as a party to this lawsuit on the grounds that HUD's actions would, in concert with DHA, deprive Plaintiffs of their rights under the Fourteenth Amendment to the United States Constitution.

26. Rather than challenging the finding of past discrimination, this lawsuit challenges the propriety of the remedy chosen by the Court, and sought to be applied by DHA, in redressing past discrimination. In brief, the portion of the Remedial Order pursuant to which DHA is seeking to construct new public housing complexes in predominantly white areas is improper under established federal constitutional standards because it is neither the most effective and flexible way in which to remedy past discrimination, nor is it the least intrusive remedy with respect to the impact that the remedy will have on the rights of innocent third parties such as Plaintiffs.

27. Both the Court and the parties in the Walker Case have acknowledged the existence of an alternate and preferable method by which to remedy the vestiges of discrimination. Specifically, the Court has already accepted Section 8 vouchers and certificates as a viable alternative to remedy the vestiges of past discrimination. Indeed, the overwhelming majority of the relief ordered by the Court, more than seventy percent (70%), is in the form of section 8 vouchers and certificates. *See* Remedial Order Affecting DHA (ordering 2,033 Section 8 vouchers and certificates, as compared with only 774 public housing units). Similarly, the Court has explicitly recognized "the applicants and residents stated preference for Section 8 units" in the context of urging DHA to "devise and submit for court approval a plan which would use Section 8 certificates and vouchers to substitute for at least part of the future allocation of new public housing in predominantly white areas." *See* Remedial Order Affecting DHA at ¶ A.7. *See also* Remedial Order Affecting HUD at § A.6 (same). DHA has ignored this plea by the

Court to accept the applicants' and residents' preference for section 8 units.

28. Given the bias in favor of Section 8 units that exists in the current Remedial Order, the parties' stated preference for Section 8 units, the increased efficacy and flexibility of Section 8 units, and the decreased impact that such units would have on innocent third parties such as Plaintiffs. DHA should not construct new public housing in predominantly white areas, as mandated by the Court's Remedial Order. That is not to say, however, that section 8 units should not be utilized in predominately white areas. To the contrary, Plaintiffs do not challenge the propriety of that portion of the Remedial Order that requires DHA to provide section 8 units in predominantly white areas. Indeed, Plaintiffs welcome such a use of Section 8 units as a more narrowly tailored way in which to remedy the vestiges of discrimination that the Court found in the Walker Case.

29. In the alternative, to the extent that the evidence adduced at the trial of this case demonstrates a color blind use of the Section 8 program would equally serve to remedy the vestiges of discrimination, Plaintiffs would not challenge such a remedy. Indeed, to the extent that a color blind remedy would serve to eradicate the vestiges of discrimination, Plaintiffs assert that such a remedy would be preferable and constitutionally required. In advocating such a color blind remedy, however, Plaintiffs do not challenge the Court's finding of past discrimination, nor do they challenge the Court's authority to remedy that discrimination.

V.

Causes of Action

A. Violation of Civil Rights Pursuant to Section 1983

30. Paragraphs 1 through 29 are incorporated herein by reference as though fully restated.

31. By the actions described herein, DHA has violated Plaintiffs' constitutional rights under the 14th Amendment to the United States Constitution. Specifically, DHA has selected the two Sites based largely, if not solely, on the racial composition of the surrounding neighborhood. Moreover DHA has announced an intention, pursuant to the Remedial Order, to select tenants to occupy this site based on a race-conscious tenant selection method. Both actions involve an impermissible distinction between citizens solely because of their race, and such actions are not the least intrusive or the most narrowly tailored remedy available to remedy the vestiges of discrimination found by the Court in the Walker Case.

32. These actions on the part of DHA have been undertaken under the color of state and/or federal law, and have deprived Plaintiffs of their federal constitutional right to equal protection under the Fourteenth Amendment of the United States Constitution.

33. As a direct result of this violation, Plaintiffs have suffered, and will continue to suffer, damages. This damage has and will permanently affect that value of Plaintiffs' property.

34. In addition, Plaintiffs have been forced to retain the services of the law firm of Lynn Stodghill Melsheimer & Tillotson, L.L.P., 1717 Main Street, Suite 3660, Dallas,

Texas 75201, and the undersigned to prosecute this action. Plaintiffs have promised to pay a reasonable fee for such services through trial and all appeals for which Plaintiffs have suffered damages in an amount in excess of the minimum jurisdictional limits of this Court. DHA should be required to pay these fees.

B. Declaratory Judgment.

35. Paragraphs 1 through 34 are incorporated herein by reference as though fully restated.

36. There exists between Plaintiffs and DHA an actual controversy as to whether DHA's announced intention to acquire the Sites and to thereafter construct and operate public housing on the Sites, is in violation of Plaintiffs' rights under the 14th Amendment to the United States Constitution. Pursuant to 28 U.S.C. §§ 2201 and 2202. Plaintiffs request that the Court render a judgment declaring that the following actions on the part of the DHA are in violation of Plaintiffs rights under the Fourteenth Amendment to the United States Constitution:

a. DHA's intention and efforts to acquire the Sites;

b. DHA's acquisition of the Sites;

c. DHA's plan to construct public housing on the Sites; and

d. DHA's construction of public housing on the Sites.

These actions on the part of DHA are in violation of Plaintiffs' rights under the 14th Amendment to the

United States Constitution because the actions of the DHA are based on distinctions made on the basis of race and are not the least intrusive or most narrowly tailored remedy available to remedy the vestiges of discrimination found by the Court in the Walker Case.

37. In addition, Plaintiffs request an award of its reasonable and necessary attorneys' fees in connection with this declaratory judgment, as provided by 28 U.S.C. §§ 2201 and 2202.

C. Application for Injunctive Relief

38. Paragraphs 1 through 37 are incorporated herein by reference as though fully restated Plaintiffs seek relief hereunder pursuant to Rule 65 of the Federal Rules of Civil Procedure and respectfully show as follows:

a. As shown above, the Court has entered a Remedial Order Affecting DHA that is race conscious. DHA has not appealed the Order, and has publicly stated its intention to comply with the order, pursuant to which it has initiated efforts to acquire the Sites and to thereafter construct public housing in predominantly white areas of Dallas which are located in close proximity to Plaintiffs' property.

b. If the Order is left standing and DHA is not enjoined, DHA will acquire the Sites and will begin its efforts to construct public housing in predominantly white areas of Dallas, which are located in close proximity to Plaintiffs' property, thus causing Plaintiffs to suffer immediate and irreparable harm

for which there is no adequate remedy at law. Specifically, DHA will begin construction of public housing units pursuant to a race-conscious law or policy in violation of the Fourteenth Amendment to the United States Constitution, with such construction permanently affecting the character of the neighborhood, and value of Plaintiffs' property.

c. The only adequate relief under the circumstances is a Temporary Restraining Order, for which Plaintiffs now sue, enjoining and restraining DHA from acquiring the Sites or, in the alternative, from constructing public housing on the Sites.

d. Plaintiffs also seek and are entitled to a preliminary and permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure because:

(1) Plaintiffs are entitled to the relief demanded above and such relief requires that the DHA be restrained from acquiring the Sites and constructing public housing on the Sites;

(2) DHA has indicated its intent to adhere to the terms of the Remedial Order, despite the fact that it is constitutionally overbroad;

(3) Plaintiffs are entitled to a writ of injunction under the principles of equity; and

(4) Irreparable injury to Plaintiffs will occur irrespective of any remedy at law

e. Plaintiffs therefore request that the temporary restraining order in this case be converted to a preliminary injunction during the pendency of this action and, upon final trial, a permanent injunction.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray judgment of the Court that DHA be enjoined from purchasing the Sites or, in the alternative, that it be enjoined from constructing public housing on the Sites; that a temporary restraining order be issued as requested and set forth in Section "C" above; that upon final trial, a permanent injunction be issued as requested above; and for such other and further relief to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

LYNN, STODGHILL, MELSHEIMER & TILLOTSON, L.L.P.

By: /s/ Michael P. Lynn
Michael P. Lynn, P.C.
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared DAVID BEER, who being first duly sworn, upon his oath stated that he is the duly authorized representative for Highlands of McKamy IV and V Community Improvement Association; that he has read the above and foregoing Plaintiff Original Complaint and Request for Injunctive Relief; that he has personal knowledge of the factual statements relating to Plaintiffs' property, DHA's intention to purchase the Sites and construct public housing on them, and the effect of such action on the value of Plaintiffs' Property, and that those factual statements are true and correct.

/s/ David Beer
DAVID BEER

SUBSCRIBED AND SWORN TO BEFORE me on this the 3rd day of July, 1996 to certify which witness my hand and official seal.

/s/ Rhonda K. Polvado
Notary Public, State of Texas

/s/ Rhonda K. Polvado
Typed or Printed Name

Commission Expiration: 01-25-2000

[SEAL] RHONDA K. POLVADO
NOTARY PUBLIC
State of Texas
Comm. Exp. 01-25-2000